ELIZABETH CHOQUETTE	:	HHB-CV14-5016112-S
	:	
	:	J.D. NEW BRITAIN AT NEW BRITAIN
v.	:	
	:	
	:	
ADMINISTRATOR, UNEMPLOYMENT	:	
COMPENSATION ACT	:	JUNE 1, 2015

BRIEF OF PLAINTIFF / APPELLANT ELIZABETH CHOQUETTE IN SUPPORT OF HER APPEAL

I. NATURE OF THE PROCEEDINGS

This is an unemployment appeal filed by the Plaintiff, Elizabeth Choquette pursuant to C.G.A. § 31-249b and the Practice Book §22-1. The Defendant is the Administrator of the Unemployment Compensation Act. Specifically, Plaintiff is appealing Elizabeth Choquette v. Middlesex Center for Advanced Orthopedic Surgery, Board Case No. 865-BR-14, a decision of the Employment Security Board of Review which had denied Plaintiff's appeal of an adverse decision in Appeals Referee Case No. 1033-AA-14.

II. FACTUAL BACKGROUND

A. Plaintiff's Employment with the Middlesex Center for Advanced Orthopedic Surgery

Plaintiff Elizabeth Choquette is a registered nurse ("RN"). The Defendant Employer is the Middlesex Center for Advanced Orthopedic Surgery ("Middlesex Center" or "Middlesex"), who employed the Plaintiff as a RN from January 4, 2011 to January 24, 2014. Dkt. 100.31, Superior Court Record pg. 57. (hereinafter "Rec."). Plaintiff has been a RN for over forty

years. Dkt 105, Transcript 10:10-11. In 2013 she maintained RN licenses in Connecticut and Hawaii. Id. 19:10-13. Additionally, she had been a RN in California and North Carolina during times when her husband, a military service member, had been stationed in these states. Id. 19:10-15, 29:5-11, Dkt. 106, Transcript 14:10-20.

The Middlesex Center maintained a "Clinical License" policy that required a "clinician" be "responsible for maintaining a current CT RN license." Rec. pg. 6. This policy stated that all registered nurses "must have a current Registered Nurse license while working" at Middlesex, that Middlesex would review the license upon hire, that the RN would be responsible for maintaining their Connecticut RN license, that Middlesex would not accept "blue cards" as evidence of licensure, copies of the employee's RN license printed from the State of Connecticut Department of Public Health's website would be provided to a "Team Leader" prior to an expiration date, and that if any employee failed to comply with this policy, Middlesex could impose "further action up to and including immediate dismissal." Id. This policy stated that a "tickler list" would be maintained to "follow up on clinical licensure." Id. The "Blue Card" is a card sent by the Connecticut Department of Health ("DPH") to the nursing license holder verifying that the RN license had been renewed. Dkt. 105, 15:1-20.

After her hire, Plaintiff had tried to give this blue card to her supervisor Maura Anderson. Dkt. 106, 25:12-14. Anderson declined the card and informed the Plaintiff that Middlesex checks RN licenses online. Id.

Sometime in June or July 2013, Plaintiff believed that she had received a notice reminding her that her nursing license would be expiring on August 31, 2013, and that she should renew her license by that time. Dkt. 105, 13: 1-24, 14: 1-5. Upon receipt of this notice, Plaintiff believed she had then renewed her Connecticut nursing license online. Dkt. 105, 62:

12-13. However, Plaintiff had in fact renewed her Hawaii RN license online. Id. 62:12-14. Sometime thereafter, Plaintiff recalled that she received a notice that she needed to renew the Connecticut RN license and that she had thrown out this notice because she believed that had already renewed the Connecticut RN license. Id. 62:17-18.

On January 16, 2014, Anderson and Louise de Chesser, Middlesex Administrator, signed off on Plaintiff's Annual Performance Evaluation. Rec. pg. 4. No mention was made of Plaintiff having a lapsed or non-renewed license. The evaluation was exemplary, with Plaintiff receiving multiple "outstanding" and "very good" ratings. Rec. pg. 44-47. Anderson was to have verified Plaintiff's license status at an earlier date, and was disciplined by Middlesex for failing to review annual RN licensure in a timely manner. Performance Improvement Documentation" dated January 20, 2014., Dkt. 106, pg. 45:5-23. Had Middlesex checked its own tickler system in a prompt manner, it would have known the date that Plaintiff's license expired.

Plaintiff and Anderson met on January 20, 2014 for purposes of the discussing the Plaintiff's annual performance evaluation. Dkt. 105 61:17:-20. Anderson had informed Plaintiff that Plaintiff's RN license was inactive. Id. 61:21-62:1. The Plaintiff informed Anderson that she thought she had renewed her license. Id. 34:19-23. The Plaintiff's license had not lapsed at a prior time she had worked at Middlesex, and she had not received any discipline for allowing her license to lapse. Id. 35:18-24, 36:1.

Plaintiff took immediate action to reinstate her Connecticut RN license. On January 22, 2014 Plaintiff provided Middlesex with a detailed list of the steps she had taken to reinstate her RN license which included speaking with an DHS employee, filling out an application license, having her picture taken for the license, sending in a money order for the fees requested, paid for a verification from North Carolina, sent the state of Hawaii a request for verification, and

made the same request to California. She requested Anderson send DPH a letter verifying Plaintiff's most recent nursing experience, dates of employment, and date of clinical evaluation. Rec. pg. 84, January 22, 2014 email from Plaintiff to Maura Anderson, subject "License Update."

Middlesex did not issue the letter when it received Plaintiff's request. Rather than issue the DPH this letter, Middlesex insisted that Plaintiff sign a "Full and Complete Release" a document that stated that Middlesex would pay Plaintiff certain "post employment benefits" (that were not defined) in exchange for a release of certain claims Plaintiff may have had against Middlesex. Rec. pg. 51-53. Middlesex characterized this Release as a "hold harmless" letter that Plaintiff was supposed to have signed. Dkt. 105. 40:12-22, 48, 49, 50:1-12. Middlesex administrator Luoise de Chesser interpreted the "Full and Complete Release" as Plaintiff's agreement to relieve Middlesex of any liability; "well essentially, relieving [Middlesex] any liability as – as far as her – as far as her not renewing her license – her nursing license." Id. 49:11-13. Only after Middlesex formally terminated Plaintiff's employment did they issue the letter. Rec. pg. 54. On January 24, 2014 Middlesex ostensibly terminated Plaintiff's employment for having "not renewed her nursing license which is a mandatory piece of working at MCAOS." Dkt. 105, 33:13-14.

On March 24, 2014, the DPH issued Plaintiff a "Connecticut Registered Nurse – Temporary Permit." Rec. pg. 50. On April 1, 2014 the DPH reinstated Plaintiff's license with no warning or disciplinary action taken. Rec. pg. 48, 49.

B. Unemployment Proceedings Before the Department of Labor, Employment Security Appeals Division, and the Board of Review.

Plaintiff filed for unemployment benefits. Her application was denied at the administrator level. The administrator found that the claimant was discharged for willful misconduct in the course of employment "due to her allowing her RN medical certificate/ card to lapse." Rec. pg. 10. The administrator considered this "deliberate misconduct in the course of employment in wilfiul disregard of the employer's interest." Rec. pg. 13. The Plaintiff appealed this adverse decision to the Employment Security Appeals Division for an Appeal's Referee Hearing. Appeals Referee Stephen F. Wierbicki heard the Plaintiff's appeal on May 21, 2014. Rec. pg. 56. Middlesex's business office manager Patricia Wagner and Middlesex administrator Louise De Chesser appeared for the employer. Id. Pg. 57. The Appeals Referee denied the appeal, and found that found the Plaintiff had engaged in willful misconduct by allowing her RN license to lapse, and allegedly failing to take necessary measures to keep an active nursing license, citing C.G.A. § 31-236(a)(2)(B). Rec. pg. 59.

Plaintiff appealed this adverse decision to the Employment Security Board of Review. Rec. pg. 62. As grounds for the appeal, Plaintiff offered the following four reasons; the finding of willful misconduct was error as the referee's decision was supported by the testimony and evidence, the employer failed to carry its burden of proof to show Plaintiff's action rose to the level of willful misconduct, the referee failed to properly develop the record to support a finding of willful misconduct under the required analysis of either deliberate misconduct or the knowing violation analysis, and finally Board precedent and case law concerning the lapse of an occupational license would not deny unemployment benefits. Id. In furtherance of her appeal,

the Plaintiff submitted a memorandum in support of her appeal to the Board on June 20, 2014. *See* Rec. pgs. 67-72.

The Board ordered a further evidentiary hearing on the basis "that the ends of justice require that the board receive additional evidence and testimony in order to adjudicate the appeal." Rec. pg. 74. The Board held the additional evidentiary hearings on August 6, 2014 and September 10, 2014. Rec. pg. 77, 79. Plaintiff submitted additional evidence in advance of the Board hearing; a four step description of steps taken on January 22, 2014 to reinstate her lapsed license, confirmation that Plaintiff renewed her Hawaii RN license on June 29, 2013, and the January 22, 2014 email from Plaintiff to Maura Anderson. Rec. pg. 81, 83, 84. After the hearing was closed, the Board "supplemented" the record with screenshots of the Hawaii Department of Commerce and Consumers Affairs (HDCCA") website and webpages purportedly from the "State of Connecticut's eLicensing website." See Rec. pg. 87.

Plaintiff then filed her appeal to Superior Court pursuant Practice Book 22-1. The Plaintiff motioned this Court to order the Board of Review to prepare a transcript of the proceedings before the Appeals Referee and the Board transcripts per Practice Book 22-4. Within the statutory period of the filing of the transcripts onto the docket, the Plaintiff, pursuant to Practice Book Section 22-4, timely filed a motion to correct the findings contained in the Board of Review's decision of October 2, 2014. *See* Dkt. 112, Plaintiff's Motion to Correct and Board Decision on same. The Board ruled on the Plaintiff's motion on April 1, 2015, granting in part and denying in part.

III. STANDARD OF REVIEW

Connecticut favors granting unemployment benefits, even in doubtful cases. “[T]he legislature . . . expressly [mandated] that the act shall be construed, interpreted and administered in such manner as to presume coverage, eligibility and nondisqualification in doubtful cases. General Statutes § 31-274(c)." Church Homes, Inc. v. Administrator Unemployment Compensation Act, 250 Conn. 297, (1999).

“To the extent that an administrative appeal, pursuant to General Statutes § 31-249b, concerns findings of fact, a court is limited to a review of the record certified and filed by the board of review.” United Parcel Service, Inc. v. Administrator, 209 Conn. 381, 385 (1988). " A finding of willful misconduct is a mixed question of law and fact.” Id at 386.

“If the appellant desires that the findings be corrected, the appellant must, within two weeks of the filing of the record in the Superior Court, file with the board a motion for correction of the findings." Calnan v. Administrator, Unemployment Compensation Act, 43 Conn. App. 779, 686 A.2d 134 (1996). "If the referee's conclusions are **reasonably and logically drawn**, the court cannot alter them." Manukyan v. Administrator, Unemployment Compensation Act, 139 Conn.App. 26, 54 A.3d 602 (2012)(internal citation omitted)(emphasis added). “The court is bound by the findings of subordinate facts and **reasonable factual conclusions** made by the appeals referee.” Chicatell v. Administrator, Unemployment Compensation Act, 145 Conn.App. 143, 74 A.3d 519 , (2013)(emphasis added). “In the absence of a motion to correct the findings of the board, the court is not entitled to retry the facts or hear evidence.” Davis v. Administrator, Unemployment Compensation Act, 155 Conn.App. 259, 109 A.3d 540 (2015).

When the issue is one of law, the reviewing court has a “broader responsibility of determining whether the administrative action resulted from an incorrect application of the law

to the facts found or could not reasonably or logically have followed from such facts. Although the court may not substitute its own conclusions for those of the administrative board, it retains the ultimate obligation to determine whether the administrative action was unreasonable, arbitrary, illegal or an abuse of discretion." Resso v. Administrator, Unemployment Compensation Act, 996 A.2d 280 (2010). "Issues of law afford a reviewing court a broader standard of review when compared to a challenge to the factual findings of the referee." Addona v. Administrator, Unemployment Compensation Act, 121 Conn.App. 355, 996 A.2d 280, (2010).

IV. ARGUMENT AND DISCUSSION

A. The Board's Denial of Plaintiff's Appeal is Unreasonable, Arbitrary, and an Abuse of Its Discretion. The Board Credibility Determination is Not Supported by the Record.

As grounds for finding that the Plaintiff committed disqualifying misconduct, the Board focused on the license renewal notification, the renewal of the Hawaii license and the testimony of Middlesex employee Ms. Wagner. The Board hearing officer noted that Ms. Wagner testified that "all of the employer's nurses were required to submit printed copies of their renewed Connecticut licenses from the Connecticut Department of Public Health to their team leaders prior to the license expiration date under the employer's clinical license policy, and that the claimant was the only nurse who failed to submit a copy of her Connecticut license." Rec. pg 88-89.

The record does not support this assertion. Middlesex failed to inspect and maintain current records of its employee's licensure. The policy at issue noted that "a tickler list will be maintained to follow up on clinical licensure." Rec. pg. 6. Middlesex disciplined Plaintiff's Team Leader Maura

Anderson for her failure to check licensure of its employees on January 20, 2014. Rec. pg. 44. This was four days before the date of the Plaintiff's discharge. Notably, on January 16, Anderson and De Chesser had enthusiastically signed off on Plaintiff's exemplary evaluation. Rec. 47. In other words, Anderson performed the evaluation without checking licensure, and should have done so in August according to the "tickler."

The post hearing addition of the Hawaii and Connecticut DPH webpages worked an unfair surprise to Plaintiff, and deprived Plaintiff of her due process rights. It also forms an impermissible foundation to the Board's credibility determination. These materials were entered into the record after the Board hearing officer closed the hearing. Dkt. 106, 50:23-24. The Board hearing officer's conclusion that "the renewal of her Hawaii license involved numerous steps that would place a reasonable person on notice that she was renewing her Hawaii nursing license" was based upon the hearing officer's post hearing review of the agencies' webpages. Rec. pg. 91-100, Brd. Exhibit 1. Plaintiff had a mistaken belief that in June or July, she had renewed her Connecticut nursing license online.

The Board's post hearing supplement of the Hawaii screenshots denied the claimant the opportunity to explain how she could have confused the registration of either state (Connecticut or Hawaii) as they both allowed a nurse to renew her license through a website. As it is the employer's burden to demonstrate the claimant engaged in willful misconduct, the Board should not have included these materials into the record, especially post-hearing. Secondly, this material was readily available and easily accessible to the hearing officer at both Board hearings. As the Plaintiff had already testified at length about her mistaken belief vis a vis the Hawaii and Connecticut RN renewals, the hearing officer should have shown the Plaintiff these screenshots and allowed the Plaintiff to fully respond.

There exists a disturbing and impermissible use regarding the inclusion of these Hawaii and Connecticut licensor screenshots. It is a clear attempt by the hearing officer to create what the hearing officer believes to be the Plaintiff's state of mind in June 2013 without allowing Plaintiff the ability to respond. The Plaintiff consistently maintained that she had a mistaken belief that she renewed the Connecticut license online like she had on prior occasions. Her testimony demonstrates that there was confusion between Connecticut and Hawaii. However, over a year later, the Board hearing officer proffers post hearing acquired screenshots to unequivocally demonstrate that the Plaintiff "knew or, at the very least, should have known that she failed to renew her Connecticut nursing license for more than 120 days after the renewal deadline." Rec. pg. 88. This in turn provides the basis for the holding that Plaintiff acted with reckless disregard of the employer's interests, thus constituting deliberate misconduct in the course of employment.

A good faith mistaken belief cannot provide the basis for a finding of deliberate misconduct. Post hearing evidence not subject to a meaningful response by the Plaintiff cannot provide a basis for a finding of deliberate misconduct.

B. The Middlesex Center Failed To Demonstrate that Plaintiff Committed Deliberate Misconduct.

Deliberate misconduct requires the administrative factfinder find the following;

> "to determine that misconduct is deliberate, the [board] must find that the individual committed the act or made the omission intentionally or with reckless indifference for the probable consequences of such act or omission…..deliberate misconduct is in wilful disregard of the employer's interest, [requires board]…find that: (1) the individual knew or should have known that such act or omission was contrary to the employer's expectation or interest; and (2) at the time the individual committed the act or made the omission, he understood that the act or omission was contrary to the employer's expectation or interest and he was not motivated or seriously influenced by mitigating circumstances of a compelling nature. Such circumstances may include: (A) events or conditions which left the individual with no reasonable alternative course of action; or (B) an emergency situation in which a reasonable individual in the same circumstances would

> commit the same act or make the same omission, despite knowing it was contrary to the employer's expectation or interest."

Tosado v. Administrator Unemployment Compensation Act, 130 Conn.App. 266, 22 A.3d 675, 681-682 (2011), citing Regs., Conn. State Agencies § 31-236-26a (b), § 31-236-26a (c). In the unemployment context, Connecticut courts have focused on the meaning of what is required for a finding of "deliberate" misconduct. In Addona v. Administrator Unemployment Compensation Act, 121 Conn.App. 355, 996 A. 2d 280 (2010), the court noted that deliberate misconduct requires the improper conduct be intentional, done purposely and with knowledge.(emphasis added). "[W]ilful misconduct includes deliberate disobedience or the intentional violation of a known rule…the breach of a rule by one who knows at the time that he is breaking the rule is a wilful breach. . . . It follows that improper or wrong conduct which is intentional, that is, such as is done purposely with knowledge, constitutes wilful misconduct, and therefore the deliberate violation of a reasonable rule in connection with work is sufficient to constitute wilful misconduct." Id. n. 13 citing Bigelow Co. v. Waselik, 133 Conn. 304, 308, 50 A.2d 769 (1946). Deliberate misconduct must be performed intentionally or purposely with knowledge of the consequences of the act. Nick T. Carelock v. Raymour & Flanigan, 826-BR-10, decided 8/5/2010; Digest No. DD 5-01 (internal citations omitted).[1]

Here, there was an omission, a failure to act. The Plaintiff had a mistaken belief that she had renewed the Connecticut license in June, and this was not brought to her attention until six months later. She was living in Connecticut, had no plans to return to Hawaii, and honesty believed that she had done what was required, and something she had done on a prior occasion. Plaintiff had an exemplary work record, as noted in her evaluation. She was a professional RN with many years of experience. Why on earth would she commit an intentional

[1] Copies of Board decisions cited within are attached to this brief.

act that would result in her losing her occupational license? Knowingly, intentionally, deliberately or purposefully do not factor into this analysis. Plaintiff had a mistaken belief and tried to remedy the situation as swiftly as possible when this was brought to her attention.

C. Board of Review Jurisprudence Does Not Support a Denial of Unemployment Benefits in Circumstances Akin to Plaintiff's Lapsed License.

Prior Board decisions involving lapsed or expired licenses supports Plaintiff's appeal. In Eliza L. Schmeelk v. Tri-County Associates for Retarded Citizens, Inc. 543-BR-04, decided 8/20/2004; Digest No. CS 7-00, the Board did not find willful misconduct where the employer advised the claimant that her medical certification was about the lapse. Upon this notification the claimant took measures to have this license renewed. The employer suspended her while it allowed other employees to work but would not allow the claimant to pass out medications. In Aqueelah Virgo v. The Village for Families and Children, Inc. 1636-BR-10, decided 11/3/2010; Digest No. DD 5-32, the claimant took reasonable steps to restore her license but was unable to do so in the timeframe imposed by her employer. The Board upheld the referee's decision finding no willful misconduct. As such, Plaintiff's appeal should be sustained.

D. The Middlesex Center Consistently Stated that Plaintiff Violated Policy Therefore the Board Should Have Applied the Willful Misconduct Known Rule Violation Analysis.

The Board, and the Appeals Referee, should not have decided the Plaintiff's appeal under the deliberate misconduct analysis required by § 31-236-23b of the Regulations of Connecticut State Agencies. The Middlesex Center was quite clear in its belief that Plaintiff failed to follow its policy regarding licensure. Where the employer claims that an employee violated a known rule or policy, the Appeals Referee must make several findings to establish

willful misconduct.[2] Punting to the deliberate misconduct standard allows the Appeals Referee to forgo an analysis that would certainly find for the Plaintiff as Middlesex failed to carry its burden and failed to uniformly enforce its policies. For example, had the Referee undertaken this analysis, he would have found that the Plaintiff did not commit willful misconduct under statute and regulation as Middlesex failed to demonstrate that the Plaintiff knew that she breached the policy at the time of the breach.

V. CONCLUSION

For these foregoing reasons, the Plaintiff – Appellant respectfully requests this Court sustain her appeal and order the Defendant Administrator to award Plaintiff her unemployment benefits forthwith.

By: ***/s/ Barbara J. Collins***
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[2] "To establish that an individual was discharged or suspended for wilful misconduct under this definition, pursuant to § 31-236-23b of the Regulations of Connecticut State Agencies, **all of the following findings must be made**. First, there must have been a knowing violation in that "(1) the individual knew of such rule or policy, or should have known of the rule or policy because it was effectively communicated to the individual. . . . (2) the individual's conduct violated the particular rule or policy; and (3) the individual was aware he [or she] was engaged in such conduct." Regs., Conn. State Agencies § 31-236-26b (a). Second, the rule or policy must be reasonable in that it "furthers the employer's lawful business interest." Id., § 31-236-26b (b). Third, the rule or policy must be uniformly enforced in that "similarly situated employees subject to the workplace rule or policy are treated in a similar manner when a rule or policy is violated." Id., § 31-236-26b (c). Fourth, the rule or policy must be reasonably applied in that "(1) . . . the adverse personnel action taken by the employer is appropriate in light of the violation of the rule or policy and the employer's lawful business interest . . . and (2) . . . there were no compelling circumstances which would have prevented the individual from adhering to the rule or policy." Id., § 31-236-26b (d). Fifth, the violation of the rule or policy must not have been a result of the individual's incompetence, where "the individual was incapable of adhering to the requirements of the rule or policy due to a lack of ability, skills or training, unless it is established that the individual wilfully performed below his employer's standard and that the standard was reasonable." Id., § 31-236-26b (e). Resso v. Administrator, Unemployment Compensation Act, 147 Conn.App. 661 (2014)(emphasis added).

CERTIFICATION OF SERVICE

I hereby certify that on June 1, 2015 a copy of this foregoing **PLAINTIFFS BRIEF** was faxed and/ or mailed to:

Employer Middlesex Center
O'Malley, Deneen, Leary, Messina & Oswecki
20 Maple Ave.
Windsor, CT 06095

Attorney General's Office
Richard T. Sponzo, Esq.
55 Elm St.
PO Box 120
Hartford, CT 06141-0120

/s/ Barbara J. Collins

Exhibit A.

Employment Security Board of Review Decisions

BR-1 # 15

STATE OF CONNECTICUT

Department of Labor

Employment Security Appeals Division

Board of Review

38 Wolcott Hill Road

Wethersfield, CT 06109

Telephone: (860) 566-3045 Fax: (860) 263-6977

IMPORTANTE - TENGA ESTO TRADUCIDO

INMEDIATAMENTE - TIEMPO LIMITADO PARA APELAR

Claimant's Name: NICK T. CARELOCK

S.S. #: ***********

Employer's Name, Address & Reg. No.

RAYMOUR & FLANIGAN

Raymours Furniture Co., Inc.

c/o Peoplesystems

P.O. Box 4816

Syracuse, NY 13221-4816

E.R. #: 93-780-61

Board Case No.: 826-BR-10

Referee Case No.: 1320-AA-10

Date mailed to interested

parties: August 5, 2010

DECISION OF THE BOARD OF REVIEW

I. CASE HISTORY AND JURISDICTION

The administrator ruled the claimant eligible for unemployment benefits effective February 14, 2010, and notified the employer of its chargeability on March 9, 2010. On March 29, 2010, the employer appealed the administrator's decision to the Hartford office of the appeals division. The appeals division scheduled a hearing of the appeal for April 22, 2010, which the claimant and employer attended. By a decision issued on April 23, 2010, Associate Appeals Referee Sherwin M. Nelson reversed the administrator's ruling.

The claimant filed a timely appeal to the board of review on April 24, 2010. Acting under authority contained in General Statutes § 31-249, we have reviewed the record in this appeal, including the recording of the referee's hearing.

II. DECISION ON THE CLAIMANT'S REQUEST FOR A FURTHER EVIDENTIARY HEARING

In support of this appeal from the referee's decision, the claimant requests a further hearing because he does not believe the referee gave him a fair chance to prove that he is entitled to receive unemployment compensation benefits. The claimant contends that the referee prejudged the case prior to taking his testimony.

We have previously ruled that we will not retry a matter where the referee afforded the party a full and fair opportunity to present its case. See *Lopez v. Southwick & Meister, Inc.*, Board Case No. 1211-BR-90 (11/26/90). Our review of the record of the referee's hearing, including the recording of the hearing, failed to reveal any bias or unprofessional conduct on the part of the referee. On the contrary, the record reveals that the claimant was afforded adequate opportunity to offer relevant testimony, cross-examine the employer's witness, and rebut any evidence offered by the employer. We conclude that the referee conducted the hearing in a fair and impartial manner, and we do not find anything unacceptable in the referee's conduct. Thus, we decline to offer the claimant a further hearing.

The claimant's request for an evidentiary hearing having failed to show, pursuant to Regs., Conn. State Agencies § 31-237g-40, that the ends of justice require that the board receive additional evidence or testimony in order to adjudicate the appeal properly, the board holds that the request is denied.

III. ISSUE

The referee ruled that the employer discharged the claimant for wilful misconduct and thus he was disqualified from receiving unemployment compensation benefits. In support of this appeal from the referee's decision, the claimant contends that lying to the employer about wether he was wearing a seat belt on the day of the accident was poor judgment and did not constitute wilful misconduct. The issue before the board is whether the employer discharged the claimant for wilful misconduct in the course of the employment.

IV. PROVISION OF LAW

Section 31-236(a)(2)(B) of the General Statutes provides that an individual shall be ineligible for benefits if it is found that the individual was discharged or suspended for wilful misconduct in the course of the employment, defined as deliberate misconduct in wilful disregard of the employer's interests or as a single knowing violation of an employer's reasonable and uniformly enforced rule or policy, when reasonably applied, unless the violation is due to an employee's incompetence. The ineligibility for benefits will be in effect until such individual has earned at least ten times his or her weekly benefit rate.

V. FINDINGS OF FACT AND CONCLUSION OF LAW

The employer discharged the claimant for his dishonesty in lying to the employer on two occasions regarding the matter of whether he was wearing a seat belt on December 11, 2009, when he was involved in an accident during work hours. The claimant was one of three employees riding in a delivery truck designed to seat two individuals. The claimant was not in one of the two seats. He sat on a cushioned crate in between the two seats and did not have access to a seat belt. After the accident, all three employees were injured and transported to the hospital. Brian Anastasi, the employer's regional director, questioned all three employees at the hospital. When he asked the claimant, who had injured his shoulder, whether he was wearing a seat belt at the time of the accident, the claimant responded: "Yes."

A week or so later, Anastasi requestioned the claimant about the accident and again asked him if he had been wearing his seat belt. The claimant again responded that he was wearing the seat belt. Anastasi knew at this time that the claimant did not answer the question truthfully because his investigation had revealed that the vehicle involved in the accident had just two seats, and that the claimant did not occupy one of the those seats. Anastaaski testified if the claimant had come forth with the truth at this time, the employer would not have discharged him, but rather would have issued him a warning.

We have consistently ruled that misconduct is any wrong or improper conduct. In order to be considered deliberate misconduct within the meaning of the statute, an act of misconduct must be done intentionally or purposely with knowledge of the consequences, or it must be of such nature as to demonstrate a reckless disregard of the probable consequences of the act. *Trottie v. Greenshire Corp.,* Board Case No. 21-BR-91 (1/25/91). On the other hand, good faith errors in judgment or

discretion generally do not constitute wilful misconduct. See *McKinney v. Administrator, Unemployment Compensation Act*, Superior Court, Judicial District of New Haven, Docket No. 1871598 (March 16, 1981); see also *May v. Science Accessories Corporation*, Board Case No. 1555-85-BR (12/30/85).

An individual who commits an act of dishonesty in the course of his or her employment that adversely affects the employer's interests or violates the standards of behavior that an employer can reasonably expect from an employee is guilty of wilful misconduct. See *Jairmen v. Administrator*, Docket No. 266186, Superior Court judicial district of Hartford-New Britain at Hartford (February 3, 1983); *Marangio v. William Tynan, Attorney at Law*, Board Case No. 997-BR-91 (8/20/91). Lying is deliberate misconduct and may constitute wilful misconduct even in the absence of a rule. *Semino v. HNS Management Company, Inc.*, Board Case No. 545-BR-00 (6/6/00).

We have also ruled that an employee's deliberate act of misrepresenting material facts to his or her employer during an investigation violates the standards of behavior that an employer can reasonably expect from an employee. See *Zinewicz v. Cascades Boxboard Group Connecticut, LLC*, Board Case No. 824-BR-08 (9/26/08); see also *Grant v. Oak Hill School*, 1061-BR-07 (9/21/07) (claimant misrepresented to employer that he was not aware of client family's allegation until he was placed on administrative leave); *Lavine v. Sound Community Services, Inc.*, Board Case No. 798-BR-07 (7/26/07)(claimant's dishonesty inhibited the employer's investigation and delayed its determination as to the nature of the events that occurred).

In the case before us, we do not agree with the claimant that his lying to the employer was a good faith error in judgment, especially since the employer gave the claimant a second opportunity to tell the truth. The claimant deliberately withheld the truth from the employer because he was nervous about the accident and was concerned about his job. We conclude that the claimant's dishonesty during the employer's investigation of the accident constituted wilful misconduct in the course of his employment.

In so ruling, we adopt the referee's findings of fact as our own.

VI. DISPOSITION AND ORDER

The referee's decision is affirmed and the appeal is dismissed. The claimant is disqualified from

receiving unemployment compensation benefits effective February 14, 2010.

BOARD OF REVIEW

_____

Lynne M. Knox, Chair,

ES Board of Review

In this decision, Board Member Elizabeth S. Wagner concurs.

LMK:SEL:lm

IF YOU WISH TO APPEAL THIS DECISION, YOU MUST DO SO BY SEPTEMBER 7, 2010.

SEE LAST PAGE FOR IMPORTANT INFORMATION REGARDING YOUR APPEAL RIGHTS.

COPIES OF THIS DECISION PROVIDED TO:

BENEFIT PAYMENT CONTROL UNIT

Department of Labor

200 Folly Brook Blvd.

Wethersfield, CT 06109

RAYMOUR & FLANIGAN

Attn: David Rajcula, Customer Deliver Mgr.

61 Chapel Road

Manchester, CT 06040

BR-1 # 6

STATE OF CONNECTICUT

Department of Labor

Employment Security Appeals Division

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IMPORTANTE - TENGA ESTO TRADUCIDO

INMEDIATAMENTE - TIEMPO LIMITADO PARA APELAR

Claimant's Name: AQUEELAH VIRGO

S.S. #: *********

Employer's Name, Address & Reg. No.

THE VILLAGE FOR FAMILIES

AND CHILDREN, INC.

c/o Unemployment Tax Management Corp.

P.O. Box 4074

Wakefield, MA 01880-0053

E.R. #: 00-005-06

Board Case No.: 1636-BR-10

Referee Case No.: 2497-AA-10

Date mailed to interested

parties: November 3, 2010

DECISION OF THE BOARD OF REVIEW

I. CASE HISTORY AND JURISDICTION

By a decision issued on May 28, 2010, the administrator ruled the claimant ineligible for unemployment benefits effective May 9, 2010. On June 7, 2010, the claimant appealed the administrator's decision to the Hartford office of the appeals division. The appeals division scheduled a hearing of the appeal for July 30, 2010, which the claimant and employer attended. By a decision issued on August 4, 2010, Associate Appeals Referee Karen Halpern Hager reversed the administrator's ruling.

The employer filed a timely appeal to the board of review on August 24, 2010. Acting under authority contained in General Statutes § 31-249, we have reviewed the record in this appeal, including the recording of the referee's hearing.

II. ISSUE AND PROVISION OF LAW

In support of this appeal from the referee's decision, the employer reiterates the contentions that it raised at the referee's hearing. The issue before the board is whether the employer discharged the claimant for wilful misconduct pursuant to General Statutes § 31-236(a)(2)(B).

III. FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the existing record, we find that the referee has adequately addressed the employer's contentions. The findings of fact made by the referee are supported by the record, and that the conclusion reached by the referee is consistent with those findings and the provisions of the Connecticut Unemployment Compensation Act.

We have previously ruled that a claimant's failure to take reasonable steps within his or her control to obtain, maintain or reinstate an occupationally required license may constitute wilful misconduct. See *Burroughs v. DeCarlo & Doll, Inc.*, Board Case No. 257-BR-90 (3/29/90). However, we have declined to find wilful misconduct where the claimant was unaware of the need to act to restore a license. See, e.g., *Settles v. Solvit, Inc.*, Board Case No. 1280-BR-07 (11/2/07)(claimant believed in good faith that his license had been suspended and reinstated). We agree with the referee that the claimant in the case before us was taking steps to restore her license but was unable, despite her good faith efforts, to have it restored in the time frame imposed by the employer.

Accordingly, we adopt the referee's findings of fact and decision.

IV. DISPOSITION AND ORDER

The referee's decision is affirmed and the appeal is dismissed. The claimant is not disqualified from receiving unemployment compensation benefits effective May 16, 2010.

BOARD OF REVIEW

Lynne M. Knox, Chair,

ES Board of Review

In this decision, Board Member Elizabeth S. Wagner concurs.

LMK:SSW:mle

IF YOU WISH TO APPEAL THIS DECISION, YOU MUST DO SO BY DECEMBER 3, 2010. SEE LAST PAGE FOR IMPORTANT INFORMATION REGARDING YOUR APPEAL RIGHTS.

BR-1 # 18

STATE OF CONNECTICUT

Department of Labor

Employment Security Appeals Division

Board of Review

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Claimant's Name: ELIZA L. SCHMEELK

S.S. #: *********

Employer's Name, Address & Reg. No.

TRI-COUNTY ASSOCIATES FOR RETARDED CITZENS, INC.

c/o Sheakley Uniservice, Inc.

P.O. Box 1160

Columbus, OH 43216-1160

E.R. #: 00-023-51

Board Case No.: 543-BR-04

Referee Case No.: 355-BB-04

Date mailed to interested

parties: August 20, 2004 DECISION OF THE BOARD OF REVIEW

I. CASE HISTORY AND JURISDICTION

By a decision issued on January 30, 2004, the administrator ruled the claimant ineligible for unemployment benefits effective January 4, 2004. On February 20, 2004, the claimant appealed the administrator's decision to the Norwich office of the appeals division. The appeals division scheduled a hearing of the appeal for March 24, 2004, which the claimant and the employer attended. By a decision issued on March 26, 2004, Principal Appeals Referee Janice T. Dombrowski reversed the administrator's ruling.

The employer filed a timely appeal to the board of review on April 8, 2004. Acting under authority contained in General Statutes § 31-249, we have reviewed the record in this appeal, including the tape recording of the referee's hearing.

II. ISSUE AND PROVISION OF LAW

In support of this appeal from the referee's decision, the employer reiterates the contentions raised at the referee's hearing. The issue before the board is whether the employer suspended the claimant for wilful misconduct in the course of the employment pursuant to General Statutes § 31-236(a)(2)(B).

III. FINDINGS OF FACT AND CONCLUSION OF LAW

The board and the courts have consistently held that unemployment resulting from the claimant's losing his or her license, certification, or other qualification required to perform his or her job constitutes a discharge under the Connecticut Unemployment Compensation Act. *Lewis v. Administrator*, 39 Conn. Sup. 371 (App.Sess. 1983); *Morrisette v. ITT Continental Baking Co.*, Board Case No. 2311-84-BR (4/8/85). However, we have also held that a claimant's failure to take steps within his or her control to have the driver's license reinstated may constitute wilful misconduct. See *Burroughs v. DeCarlo & Doll, Inc.*, Board Case No. 257-BR-90 (3/29/90). Therefore, the license or certificate has had to lapse prior to the claimant's failing to take reasonable steps to have it renewed. *Wolf v. Regional School District #10*, Board Case No. 637-BR/02 (8/6/02).

In the case before us, the claimant took reasonable steps to have her license renewed as soon as the employer advised her that her medical certification to pass medicines was about to lapse. The employer's witness testified that other employees were permitted to work without passing medications while they awaited their state certifications. We thus conclude that the employer suspended the claimant's employment for reasons other than wilful misconduct in the course of the employment pursuant to General Statutes § 31-236(a)(2)(B).

The parties have not offered any argument in support of or in opposition to the appeal that would disturb the referee's findings of fact. We further find that the findings are supported by the record, and that the conclusion reached by the referee is consistent with those findings and the provisions of the Connecticut Unemployment Compensation Act. Accordingly, we adopt the referee's findings

of fact and decision.

IV. DISPOSITION AND ORDER

The referee's decision is affirmed and the appeal is dismissed. The claimant is not disqualified from receiving unemployment compensation benefits effective January 11, 2004.

BOARD OF REVIEW

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Lynne M. Knox, Acting Chairman

In this decision, Alternate Board Member James M. Parent concurs.

LMK:KHH:bag

IF YOU WISH TO APPEAL THIS DECISION, YOU MUST DO SO BY SEPTEMBER 20, 2004. SEE LAST PAGE FOR IMPORTANT INFORMATION REGARDING YOUR APPEAL RIGHTS.